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ABSTRACT

Part of a series of classroom aids designed for real estate instructors, this instructional packet was designed to give real estate students a balanced view of the landlord-tenant relationship in Texas. Following an evaluation form for the instructional packet, a summary presentation explores the topic, explains the rules that govern and the mistakes that can be made in selecting a place to live, entering a lease agreement, moving in, day-to-day living, making repairs, paying rent, resolving disputes, moving out, and charging security deposits. Information items are keyed to relevant sections of the Texas Property Code and Texas Civil Code. Next, an Inspection Checklist, a Lease Checklist, and a Tenant-Landlord Checklist are provided as class handouts. Finally, a series of 27 visual aids keyed to the presentation are provided, covering such topics as: (1) the lease cycle; (2) making comparisons by telephone; (3) items of concern for the tenant; (4) the problems that can result from showing defective units; (5) problems that prospective tenants should carefully inspect for; (6) comfort and quality-of-life checks; (7) ways to avoid unnecessary repairs; (8) recommended items for the rental application; (9) illegal discrimination; (10) legal criteria for tenant evaluation; (11) understanding the legal obligations created by a lease; (12) Texas statutes related to landlord retaliation; (13) co-tenancy agreements; (14) Texas rules on repairs; (15) events that give tenants statutory remedies in Texas; (16) statutory procedures for lock-out; (17) property exempt from removal for unpaid rent; (18) alternatives to a lawsuit; (19) eviction procedures; (20) tenants' use of the courts; and (21) security deposit tips. (EJV)

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TEACHERS INSTRUCTIONAL PACKET
TIP No. 10, Spring 1986

THE LANDLORD'S AND TENANT'S GUIDE

Texas Real Estate Research Center
College of Agriculture
Texas A&M University
College Station, Texas 77843-2115

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Amount of material:

too little 1 2 3 4 5 6 7 8 9 10 too much

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too simple 1 2 3 4 5 6 7 8 9 10 too complex

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3. What were the strengths of the package? _____

_____

_____

_____

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_____

_____

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5. What specific changes would you like to see in future TIPs?

_____

_____

6. What additional topics would you suggest for the TIP series?

a. _____ c. _____

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THE LANDLORD'S AND TENANT'S GUIDE

This handbook is intended for those who rent homes in Texas -- both landlords and tenants. The purpose of this publication is to give a balanced view of the landlord-tenant relationship in Texas. Many problems can be avoided through communication, courtesy and common sense.

Problems and solutions will be considered within the context of the lease cycle, which consists of the following phases:

VISUAL #1
Lease Cycle

- selecting a place to live
- inspecting the property
- agreeing to the terms of a lease
- moving in
- day-to-day living
- repairs
- paying rent
- resolving disputes
- moving out and security deposits.

Different problems dominate each phase of the lease cycle. To help understand, solve or avoid these problems, two landlord-tenant relationships are introduced. First, meet Frank McGreedy, a property manager who represented the landlord, but was the only contact his tenant, Mary Complainer, had. Mary lived next to Frank, and drove him crazy with her hobby, playing the tuba.

Now, meet Jack Goode whose landlord was Sally Fare. Jack and Sally had few problems. Jack paid his rent on time; Sally kept the premises in excellent repair. Sally's apartment project had high occupancy rates. This landlord-tenant relationship made the apartment's banker happy because of the regular mortgage payments.

SELECTING A PLACE TO LIVE

Let's start at the beginning. Mary Complainer, recently evicted from her apartment, was looking for a place to live. She had all of her worldly goods in the back of her station wagon, including several suitcases, boxes and a tuba. Mary, a waitress, had applied for a job selling symphony tickets.

Driving down the street, Mary saw Frank McGreedy dressed in a dirty undershirt, shorts and cowboy boots, putting up a "for rent" sign. Mary stopped and asked to see the unit. There were cigarette burns in the sofa. A mirror was cracked. The carpet had worn spots. Several bugs scampered under the refrigerator.

"How much is the rent," she asked?

"Three hundred a month plus utilities. One month's rent as a security deposit," Frank said.

Walking through the unit, occasionally flipping a light switch, Mary asked, "Are you going to clean and repair this place?"

"Yeah, sure," Frank replied. "If you want to move in now, we can arrange to do all of that later."

"Good, in that case I'll take it," Mary said.

Mistake Number One: <u>Not shopping around for a place to live</u>. Mary offered to rent the first unit she saw. She made no comparisons. It may have been possible to find a lower price, more comfortable facilities, a better location or maybe all three. Indeed, she might have found a better landlord. She knew little about the apartment, except the base rent and what she saw from her quick inspection.

Jack Goode, approached the same decision quite differently from Mary. First, Jack identified several possible neighborhoods, keeping in mind his major concerns--distance to work, safety, reputation of the neighborhood, and the nearness of restaurants, museums, golf courses and other facilities. Jack also considered where his friends lived, noise from the airport, flooding from streams and odors from garbage or sewer treatment facilities.

Second, Jack identified available apartments by searching newspaper ads, inquiring at apartment locator services and talking to friends occupying the projects he was considering. Third, by telephoning the apartment managers, Jack determined the following information.

VISUAL #2
Making Comparisons by Telephone

- size and type of units
- rent and security deposit
- policy on pets and children
- written lease requirements
- availability of clubhouse, swimming pool or other extras
- utilities--who pays for what (gas, water, electricity)
- cable television availability
- possibilities for a short-term lease.

Fourth, Jack checked the reputation of owners or property managers with the Better Business Bureau, the local tenants' association and the building inspector; conducted a physical inspection of the premises; and talked to some tenants. He was particularly concerned with the following items.

VISUAL #3
Items of Concern

- the owner's response to repairs
- the owner's reputation for returning security deposits
- maintenance of the project
- problems like crime or noise
- lighting on walkways and common areas
- parking.

Mistake Number Two: Unprofessional image. Neither Frank McGreedy nor Mary

Complainer created an image of professionalism or reliability. Sloppiness leads to a poor image and affects the renting decision of both the landlord and the tenant. In contrast, Jack set up an appointment to see a furnished unit in Sally's project. She was dressed in comfortable business attire. Her office was tastefully decorated, neat and orderly. Before Jack arrived, Sally made sure the unit was properly cleaned and in good repair. Only in emergencies does Sally depart from her policy of showing clean and repaired units.

VISUAL #4
Landlord's Professional Image

On Jack's arrival, Sally asked him to sit and relax momentarily, offered him a cup of coffee and handed him a fact sheet about the apartment unit. She summarized the features of the apartment complex and the qualities of the neighborhood. On the way to the unit, Jack was shown the amenities, including the clubhouse and swimming pool. Sally described the social activities that were scheduled regularly.

Mistake Number Three: Showing a defective unit. McGreedy's apartment had a number of cosmetic defects that could have been corrected easily. Some of the problems existed because of damage by previous tenants. Other problems were the result of deferred maintenance. Failing to correct these cosmetic problems lead to adverse consequences.

VISUAL #5
Showing A Defective Unit Can Lead To:

- lower rent value
- new tenants who reflect a lack of pride in the place they live, thus leading to further deterioration
- displacement of responsible tenants
- decline in the total investment value of the project.

Sally Fare, on the other hand, believed in preventive maintenance. She did not allow problems to accumulate.

She worked with tenants by providing useful information on how they could make minor repairs themselves. Sally also presented each tenant a handbook of practical cleaning and maintenance hints.

After a tenant moved, Sally had the unit **exterminated** and saw to the cleaning of the carpets, painting and **repairs.** She required tests of all the mechanical and plumbing equipment, replacement of defective faucet washers, grout and similar items. Finally, she made sure the air smelled fresh and sunlight brightened the room. When possible, she put fresh flowers into furnished units to make the best impression on prospective tenants. Sally felt that faster lease-up and high occupancy rates paid for a few flowers.

Tx. Civil Statutes,
Art. 135b-6, Sec. 2 & 5
Tx. Prop. Code,
Sec. 92.051-.061

INSPECTING THE PREMISES (Checking out the landlord and tenant)

Tx. Prop. Code,
Sec. 92.051-.061

When Mary indicated her interest in the apartment, Frank asked her if she had any questions. She walked through again, flushed the toilet, turned on the lights, opened one window and looked out. Turning to Frank she said, "It looks fine. If I find something after I move in, will you make any necessary repairs?"

"Sure. No problem," Frank assured her.

"I noticed a few bugs," Mary said. "Will you have the unit sprayed?"

"No problem," Frank said.

"In that case, it looks like we'll have no problems," Mary said!

Frank said, "I've got to ask you some questions before we sign this lease."

"Sure."

"What kind of work do you do," Frank asked?

"I'm in food services, but I'm currently considering a position with the symphony," Mary said.

"Oh, you're a musician," he asked?

"Yes," she said.

"I'll have to check your references," Frank said.

"They're all back in Fairbanks, Alaska," Mary said. "If you'd like I think their addresses are packed away in one of those boxes in the back of the car. It's no problem."

"Oh, never mind," Frank said. "I think I'll save the long distance call. You look okay to me."

Mistake Number One: <u>Agreeing to rent without adequate inspection</u>. Mary's casual stroll through the apartment failed to find the serious problems. Jack, however, had a checklist for inspecting property (see Handout A). Sally had a similar checklist.

Jack inspected the property with Sally. He noted defects that needed repair next to the item on the list. Any quality defects that could not be repaired, such as a cracked kitchen counter and a brown stain in the rug also were noted. He photographed some defects and asked Sally if she intended to repair them. This information was added to his checklist. He then had Sally initial each line on the checklist requiring action. He also had her initial and date each photograph.

Some landlords balk at this professional approach to renting. They may even say others are waiting to rent the unit. Frank McGreedy would not appreciate Jack's checklist. McGreedy

intended to charge previous defects against Mary's security deposit. After all, how will she be able to prove she didn't create the damage? Jack, on the other hand, had written evidence, admissible in court, of Sally's promises and of the unit's condition when he moved in. Sally signed the checklist because spotting problems early saved trouble for everybody in the future.

Jack also inspected the exterior, talked to neighbors on either side and walked carefully through the entire complex to check maintenance and facilities. In the past, he had discovered that landlords sometimes puff their premises, omitting discussion on aircraft or automobile noise, nauseous odors from a nearby landfill or the fact that neighborhood youngsters use the parking lot as a bicycle racetrack.

Jack, more careful than most people, first, wanted to be sure there were no **safety or health hazards**. Here are some of his concerns.

Tx. Prop. Code,
Sec. 92.051-.061

VISUAL #6
Carefully Inspect For:

- exposed electrical wires
- lead paint (found in some very old houses)
- lack of a smoke detector (required in Texas)
- lack of protective strips on bathtub floor
- bugs, like fleas from pets, and other vermin (he runs his fingers through rugs)
- working door locks and window latches
- escape ways in high-rise buildings.

Second, Jack is <u>concerned about comfort and quality of life</u>. He examines and <u>checks for these items</u>.

VISUAL #7
Comfort and Quality-of-Life Checks

- sufficient water pressure
- hot water; rusty water or bad water smell or quality
- working air conditioning unit
- functioning toilets
- functioning kitchen appliances

- air drafts and water leaks
- functioning electrical outlets (he uses a inexpensive circuit tester; he has used a small table lamp); also checks for sufficient volt and amp capacity.

Third, Jack wanted to avoid unnecessary repair problems, so he investigated the premises for possible problems.

VISUAL #8
Avoid Unnecessary Repairs by Checking For:

- ceiling leaks
- unusual noises from the mechanical equipment
- loose screws
- doors that do not open freely or close snugly.
- insufficient door and window seals.

Fourth, Jack wanted to protect his security deposit against unnecessary charges. He did not want to be blamed for damages that he did not commit.

Mistake Number Two: Failing to verify tenant's employment and references. Just as some landlords are likely to exaggerate, make false promises or tell half-truths, so also are some tenants. Mary didn't necessarily lie about her employment. She liked to think of her waitress job as food services and her application to sell concert tickets as considering a position with the symphony. Further, Mary failed to mention her previous eviction. However, the responsibility for checking Mary's suitability as a tenant ultimately rested with Frank. Sometimes all it takes is a simple phone call. Even a call to Fairbanks, Alaska, might have been justified when compared to the cost of a month's rent, eviction and possible repairs because of a disgruntled tenant's vandalism.

Sally Fare checked Jack's references, which were already prepared with names, addresses and telephone numbers of his previous landlords,

employers and creditors. Sally belonged to a landlord's association, much like the Better Business Bureau, that maintains credit information on previous and current tenants in the community and a file of complaints on landlords and tenants.

Sally wants answers to several questions before renting. First, will this person pay rent on time? Tenant eviction costs money and gives her an unfriendly image. Second, is the prospective tenant reasonable and willing to abide by the terms of the lease and house rules? In this regard, Sally feels that a prospective tenant's performance with previous lease relationships is a good indicator of future behavior. Both Sally and Jack consider good landlord-tenant relationships similar to good credit--well worth building and easy to damage. Third, Sally needs to know if the tenant is careless or destructive of property. This may protect her and the quality of life for her existing tenants.

To gain needed information and establish a written record, Sally had Jack complete and sign an **application** requiring the following information:

Tx. Prop. Code, Sec. 92.002

VISUAL #9
Rental Application Should Contain:

- personal information (name, who will occupy unit)
- whom to contact in case of emergency
- employment information (job, income, how long on job)
- current address (or previous if applicant has already moved, name of landlord, telephone number, reason for leaving)
- **credit information** (bank, credit cards)
- other information (evictions, car ownership)
- personal references (name, address, phone number)
- driver's license number.

Fed. Fair Credit Report Act, 15 U.S Code
Tx. Penal Code, Sec. 32.32

Sally runs credit checks on prospective tenants when she is

uncertain about their ability or dependability in paying the rent. She closely scrutinizes prospective tenants when rent exceeds 25 percent of their gross income. If Sally decides to reject a tenant, she does so based on a legally defensible reason.

An added caution: Illegal discrimination. Frank McGreedy may have problems with federal or state laws against **discrimination** in real estate. Testimony regarding discriminatory practices could be used against him by a rejected minority tenant. While landlords make many considerations in qualifying prospective tenants, federal law prohibits discrimination in sales, rental or provision of services or facilities on the basis of race, color, religion, national origin or sex. Local laws can create additional leasing restrictions. For example, some cities prohibit discrimination against families with **children**. Landlords should check for additional leasing restrictions.

Federal Fair Housing Act

VISUAL #10
Illegal Discrimination

Tx. Family Code,
Sec. 33.01-.03

Under federal law, a landlord may evaluate a prospective tenant based on credit standing, assets and liabilities, financial stability, reputation in the community, past experience as a tenant, length of time tenant plans to occupy the premises and other justifiable business reasons. Age, occupation, size of family and ages of children also may be considered in some cities.

VISUAL #11
Tenant Evaluation
Made On:

ENTERING A **LEASE** AGREEMENT

Tx. Bus. & Com. Code,
Sec. 26.01
Tx. Prop. Code,
Sec. 92.001-.003

Frank could not think of any objections to having Mary as a tenant, and she asked, "What did you say the rent was again?"

"Three hundred dollars per month and a security deposit in the same amount," Frank replied.

"Here's $600 cash," Mary said, handing Frank the money.

Frank handed her a printed lease that fails to note receipt of the cash.

"What's this," Mary asked?

"This is our standard one-year lease," Frank explained.

"Is there anything unusual about this lease? I don't have my glasses on, so I'll have to read it later," Mary said frowning.

"Don't worry," he said. "It's just a standard lease. Our accountant requires us to have these leases signed so that he can put them into the books properly."

"But I only want to stay six months," Mary said.

"Don't worry. We're very reasonable here. Just let me know a couple of weeks before you move, and I'll take care of it," Frank said.

"Maybe I ought to read it first," she said suspiciously.

"Well, you can, but I'm going to be out of town all weekend, and I can't stay around waiting for you to make a decision. Besides, there are other people who are very interested in the unit," Frank said. "Look, why don't you just sign it now. It's a standard lease, and I'm not authorized to make any changes anyway. Of course, all landlords use the same standard lease form, so you don't have any choice if you want to rent in this town. You can take it or leave it. I can always answer your questions when I get back."

"Okay, I'll take it. Since it's a standard lease, I guess it will be all right," Mary said. She signed the lease and handed it to Frank. He took the

copy to his office and returned with a mimeographed sheet of house rules. She promised to read them when she found her glasses. The rules were misplaced; Frank never bothered to give her a copy of the lease.

Mistake Number One: Failing to get a receipt for the security deposit; failing to get a signed copy of the lease. Mary paid cash for the security deposit and first month's rent. Had a question arisen regarding payment, neither she nor Frank could have established the amounts or purposes of her payments. Disputes of this nature can quickly escalate into civil litigation, where even the courts have difficulty establishing the parties' rights. It will be Mary's word against Frank's. If landlords fail to give tenants signed copies of leases, tenants are unaware of their responsibilities.

Jack paid by **check**, which indicated to whom it was paid, amounts and purposes of payment. In addition, Sally gave him a signed receipt indicating rent and security deposit. Jack keeps all important papers, receipts, cancelled checks, lease contract, house rules and letters he or his landlord have written. If there is any question about his rights or duties, he always knows where to look.

Tx. Business & Commerce Code, Sec. 4.104-.303
Tx. Penal Code, Sec. 32.41

Mistake Number Two: Failing to understand the legal obligations created by a lease. A lease is a contract creating legal rights and duties between the landlord and tenant and also is a conveyance of interest in real estate. It is subject to federal and state statutes and to court interpretations based on contract and property law.

VISUAL #12
Understanding Legal Obligations

Although rental agreements should be in writing for the protection of both parties, an **oral lease** contract

Tx. Bus. & Com. Code, Sec. 26.01

generally is enforceable if it can be performed in a period of one year or less. This means verbally created short-term leases can create valid obligations.

An enforceable contract, once entered, generally cannot be changed by either party unilaterally. Both parties must agree to changes. Further, the parol evidence rule prohibits prior or contemporaneous oral agreements to modify or contradict the terms of an enforceable written contract. Here, for example, Frank could use the parol evidence rule to exclude Mary's testimony of the oral agreement regarding the six-month lease period because this agreement was entered prior to or at the time of the signing of the written contract. The combined effect of these two rules of contract law is this. Assuming the contract is enforceable, and Frank so chose, Mary would have been bound for 12 months by the written lease.

There is some question as to whether this written lease is enforceable by Frank. Mary could assert the 200-year-old defense of unconscionability, claiming she had substantially unequal bargaining position at the time she entered the contract and enforcement would result in tremendous hardship and unfairness. A legal defense such as this requires advice of an attorney.

In the other landlord-tenant relationship, Jack Goode used the lease checklist in Handout B. Before Sally allowed Jack to sign, they went through the lease contract clause by clause. Sally wanted to be sure Jack understood what he was signing.

Sally explained pleasantly and simply the lease and the meaning of each clause. Many landlords don't know what the clauses mean until a dispute occurs and their lawyers tell them. Sally

learned the legal intent of her contract so she is able to explain it to her tenants.

Sally then explained the **house rules.** She often is able to show the tenant how to live within the house rules when the tenant has special needs. For example, house rules prohibit large nails for hanging pictures. She supplies special small nails that accomplish the same thing without damaging the walls.

Tx. Prop. Code, Sec. 92.101

Jack and Sally also modified a clause in the standard lease contract that prohibited pets so Jack could keep his miniature Terrier. The modified clause stated that Jack must pay a $100 **pet deposit** of which $25 would automatically be used to clean the carpets at the time of his move and the remainder refunded if there was no pet-related damage. To effect this change on the preprinted form, the old clause was marked out, the new clause written in and Jack and Sally initialed both clauses.

Tx. Prop. Code, Sec. 92.101

Mistake Number Three: Signing a lease without reading it. Mary's serious mistake was not reading and understanding the lease before she signed it. Mary doesn't know what the penalty is for late rent, who is responsible for repairs, who to contact in case of emergency or her right to sublease. What she doesn't know can hurt her. If tenants do not understand contracts, they should not sign them before receiving advice from a qualified person. One should not accept the other party's interpretation on faith alone.

One type of standard lease used throughout Texas, prepared by the Texas Apartment Association (TAA), has been reviewed by TAA with several tenant groups before release throughout the state. Although it is not the only standard contract used, it serves as a good basis for comparison.

MOVING IN

Tx. Prop. Code
Sec. 92.001-.005

VISUAL #13
Mary Complainer's Unit

Mary signed the lease and moved into the unit. During a rain storm, she discovered leaks. When she called Frank, he said he would get to it in due time. She soon discovered the air conditioner didn't cool, the hot water heater didn't heat, the stove didn't cook and the freezer didn't freeze. She heard noises in the kitchen when she went to bed. She got up to discover a mouse and a broken water pipe. Mary spent 20 minutes trying to turn off the water and another 15 minutes locating Frank's telephone number, only to find him out for the evening. The water began seeping into the apartment below. A neighbor came up to show Mary the turnoff valve. Not exactly the way to meet your neighbors, thought Mary.

Mary's back door would not lock, and she discovered a window with no latch. When she called Frank, he told her to oil the lock. Frank told Mary she was responsible for locks and latches. [Note: At the tenant's request, Texas law requires the landlord to install one window latch per exterior window, one pin lock per exterior sliding door and one bolt and night latch per exterior door. The landlord must pay for installation if those items are not in place at the time the tenant moves in. Generally, the tenant is responsible thereafter. Texas law also provides a remedy if security devices are ignored by management.]

Tx. Prop. Code,
Sec. 92.151-.160

Mistake Number One: Not explaining how equipment works. Mary Complainer and Frank McGreedy were off to a bad start, with a number of needed repairs. Frank did not bother explaining how equipment worked or locations of water and gas shutoff valves. Once he received her deposit and rent money, he ignored her.

Sally, on the other hand, showed Jack how to operate all equipment in the

apartment and gave him emergency phone numbers. Sally also made note of needed repairs. She completed minor repairs on the spot with her tool kit. She left this kit with Jack saying he could return it after he was moved in. She advised him that any time he needed to borrow it, the kit was available in the office. This encouraged tenants to make minor repairs without bothering the manager.

Mistake Number Two: Failing to make the tenant feel welcome. Cordial relationships with tenants reduce turnover and complaints and cause tenants to praise the complex thus making it easier to fill vacancies. Frank's lack of enthusiasm in making repairs and dealing with tenants causes alienation, which could lead to littering, vandalism, bad debt losses and a higher vacancy rate.

After Jack moved in, Sally came by with a small green plant for the apartment. Jack noticed when he went out to get his mail, his name was already on the mailbox. Sally changed the locks on the door and gave Jack new keys when he moved in. Sally even publishes a periodic newsletter for the tenants.

DAY-TO-DAY LIVING: PART ONE

Frank McGreedy never repaired Mary's unit. When he finally gave her a copy of her lease, sure enough, the contract made her responsible for the repairs. The contract had a provision that said Mary had waived all rights based on an implied warranty of habitability.

On Saturday of Mary's second week, Frank threw a noisy party. When Mary called to complain, he told her that the house rules did not apply to him. At 6:30 the next morning, Frank awoke to the sounds of Mary's retaliating tuba.

Returning from work one evening, she walked into a cloud of smoke resulting from faulty oven wiring. Mary wrote Frank a letter demanding a **smoke alarm** in her unit. Mary called the building inspector to complain about housing code violations and found that the code required the landlord to keep the unit safe and sanitary.

Tx. Prop. Code, Sec. 92.251.262

The housing inspector visited Frank and cited him for 28 violations of the city code. When Frank learned that Mary had filed the complaint, he said he would double her rent and told her she could buy her own smoke alarm since the inspector had failed to add it to his list of violations.

In talking with some neighbors, Mary found out that Frank was the manager not the owner. Mary decided she wanted to complain directly to the owner. When she asked for the **owner's name**, address and telephone number, Frank refused her the information and said she was a troublemaker. The next day she received a letter saying that she failed to make repairs as specified in the lease, that her rent had been doubled and that her tuba playing was a violation of the house rules. Frank enclosed a new set of house rules that added this prohibition. Mary became furious and threatened him with bodily harm if he did not reverse his position.

Tx. Prop. Code, Sec. 92.201-.208

Mistake Number One: Failure to seek independent legal advice. Mary was beginning to see the consequences of her failure to read and understand her lease. Her reliance on Frank's interpretation of the contract worked to her disadvantage.

Under most circumstances, the 1983 **Texas Property Code** requires the landlord to **repair** or **remedy conditions** that materially affect the physical health or safety of an ordinary tenant. As to Mary's waiver of rights in the

Tx. Civil Code, Residential Tendencies
Tx. Prop. Code, Sec. 92.051-.061

lease, Texas law does not allow **waiver** by the tenant of statutory remedies regarding security devices, disclosure of ownership and management, and installation of smoke detectors.

Tx. Prop. Code, Sec. 92.006

Frank argued that Mary waived her right to any **implied warranty of habitability.** However, in Texas this warranty is expressed, not implied, under statutory law. Also, waivers by tenants of a landlord's duty to repair a condition that materially affects the physical health or safety of an ordinary tenant are enforceable only if the following occur:

Tx. Prop. Code, Sec. 92.051-.052
Tx. Bus. & Com Code, Sec. 17.50

VISUAL #14
Waivers Enforceable If:

- the lease is in writing
- the waiver is underlined or in bold print
- the waiver is specific and clearly lists the duty being waived
- the waiver is made knowingly, voluntarily and for consideration (this usually means that the tenant received something in exchange for the waiver).

In this situation, it does not appear that Mary's waiver can be enforced, so Frank probably will lose.

Mistake Number Two: Selective enforcement of **house rules.** Good property managers lead by example. If they are selective in enforcing house rules, either by exempting themselves or some favored tenants, this can result in three possible consequences:

Tx. Prop. Code, Sec. 92.004-.007

VISUAL #15
Consequences of Selective Enforcement of House Rules

- lack of respect by tenants
- creation of morale problems
- legal waiver of house rules.

The third consequence can take place because courts have a sense of fair play. A contract that limits the liberties of citizens will be very narrowly enforced. Classifications will be strictly reviewed and, if the landlord or the landlord's agent gives

an indication that the rules are not being applied in an even-handed way, the courts may decide the rules do not apply to anyone. Because Frank stated the house rules applied to everyone but him, the court might rule that Frank was estopped from enforcing the rules. Estopped means the court will, on this basis of fairness, not allow Frank to give evidence to deny a waiver of the rules. By saying the house rules do not apply to him, Frank cannot apply the rules to the tenants. Mary, however, may have trouble proving the facts. Again, it may be her word against Frank's.

Mistake Number Three: Violating local housing code standards. Failure by the landlord to comply with local housing codes can lead to criminal-law sanctions. These sanctions are generally unaffected by any waivers signed by the tenant.

Typically, the following steps are taken to enforce a local housing code.

VISUAL #16
Local Housing Codes

- If landlords are in violation of housing codes and fail to correct problems after they are cited, tenants may call the building inspector or the housing inspection office. (There usually is a department or a person responsible for enforcement.)
- A city employee will inspect the premises and, if a violation is found, the landlord is so advised and asked to correct the problem.
- A second inspection is made. If the landlord again fails to correct the problem, criminal charges can be filed in the local municipal court or other court of jurisdiction.
- The tenant may file charges in the court but usually only after first filing a complaint with the city.
- If the tenant disagrees with the action of the local government inspector, the tenant may appeal the decision through the administrative structure of the government. Usually

a commission will hear disagreements of housing code interpretation.

Landlords and tenants are advised to obtain a copy of their local housing code.

Mistake Number Four: Failure to install a smoke alarm. Today in Texas rental housing units are required to have at least one smoke detector. The landlord is not required to furnish batteries if the detector was working at the time the tenant took possession. During the lease period, including renewal or extension, the landlord must inspect and repair the detector only after the tenant requests inspection or gives notice of malfunction.

Mistake Number Five: **Retaliation.** When Frank doubled Mary's rent after she requested repairs and the name and address of the property owner, it is likely that Frank was retaliating.

Tx. Prop. Code, Sec. 92.057-.058

In general, Texas statute creates a rebuttable presumption that the landlord acted in retaliation where, within six months from the notice to repair, the landlord does the following:

VISUAL #17
Presumption of Landlord Retaliation

- files an eviction proceeding
- deprives the tenant of the use of the premises
- decreases services to the tenant
- increases the rent or terminates the lease.

There are exceptions, however. Mary's threat to the personal safety of the landlord, employee or another tenant allows eviction that is not considered retaliatory. Likewise, it is not retaliation when the tenant is delinquent in rent, intentionally damages property, has materially breached the lease or stays on the property after giving notice of intent to vacate.

Tenants can be guilty of retaliation as well. For example, a single tenant or a group of tenants may decide to withhold all or partial rent to punish or intimidate a landlord. In Texas, tenants do so at their peril. The courts will impose the same kind of civil penalties as they would on a landlord who retaliates. In general, retaliation is a poor tactic for either landlords or tenants.

Harassment is similar to retaliation. Harassment occurs when landlord or tenant tries to use the court system frivolously. This is a waste of time and money. Courts will impose a penalty on a person who abuses the court system to harass another person.

Tx. Prop. Code, Sec. 92.004

Mistake Number Six: Not supplying name of owner when proper request is made. Texas law mandates disclosure of ownership when requested by a tenant. (The lease can require this request in writing.) However, the owner can be a firm or partnership operating as a business or a name with a post office box mailing address. Texas requires that an **assumed name certificate** be filed in a locale where it does business. Once a proper request is made, the landlord has seven days to provide information. This information can be conspicuously posted in a clubhouse or manager's office or included in the lease or in the house rules.

Tx. Bus. & Com. Code, Sec. 36.10

Mistake Number Seven: Making mistakes because one is ignorant of the law. For example, Frank could not develop a new set of house rules and cite Mary's tuba playing without giving her an opportunity to learn about the new rule. If the house rule infringes too excessively on privacy or is unreasonable, courts will normally refuse to enforce it.

DAY-TO-DAY LIVING: PART TWO

After getting the job selling symphony tickets, Mary met a newly hired tuba player looking for a place to live. They agreed verbally on rent and utility bills, so Mary sublet half of her two-bedroom unit to the musician. Because the musician was short on money, they agreed to settle at the end of the month.

The arrangement was uncomfortable. Mary was a non-smoker and her roommate's cigarette odor filled the apartment. Mary's loose change kept disappearing. Food did not last long enough. And her roommate never helped with cleaning. At the end of the first month, the roommate was unable to settle the bills as agreed. Mary accepted partial payment. The next month, they argued about the electricity bill. Mary refused to budge, and her roommate moved out refusing to pay anything.

Mary asked Frank in writing to change the locks after her roommate moved. Frank refused and told her the subtenant was a violation of her contract. He demanded that she pay him what the subtenant had agreed to pay her. A couple of weeks later, Mary's apartment was burglarized. . .she had no insurance. The police did not discover signs of forced entry.

Mistake Number One: <u>Failing to understand that one becomes a landlord when one sublets part of the apartment unit</u>. Mary was too casual and did not have a clear, written understanding of her rights as a landlord when she sublet part of her unit. Oral subleases are difficult to prove in court, and Mary had no control of her subtenant's abuses of living privileges. Because obligations were not in writing, Mary may have lost her rights.

Similar problems can occur when two people become roommates and both sign a lease. This is similar to a partnership. Many questions may arise. What happens when one roommate leaves? Is the remaining roommate responsible for only half the rent? No. The landlord can look to the remaining roommate for the full rent. In a tenant-subtenant situation, the tenant can be in control by specifying rights in a contract. Mary failed to do this, so she never had control. Co-tenancy requires the same type of written agreement, specifying rights and duties, between co-tenants as those between landlords and tenants.

VISUAL #18
Co-tenancy Agreements

- rents
- utility costs
- bathroom and kitchen privileges
- household chores and ownership of groceries
- additional roommates
- terminating the living arrangement and satisfying the lease
- guests and privacy
- resolving disputes

In Texas, tenants may **sublet** only if the lease permits it or if the landlord gives permission, preferably written. Mary's contract allowed the landlord significant rights she didn't anticipate. Sometimes, a landlord will allow additional roommates if the rent is increased. Even if the landlord permits additional people in a unit, the local government's zoning or housing code may not. Local government restrictions on numbers occupying a rental unit in a particular area should be known prior to subleting.

Tx. Prop. Code, Sec. 91.005

Mistake Number Two: Failing to manage property risk. Tenants often do not realize **insurance** is available to protect their possessions. Mary, uninsured, suffered a large, personal loss.

Tx. Prop. Code, Sec. 92.054

Further, Frank refused to change Mary's locks. If it can be shown that the burglary was a result of the landlord's negligence, the risk of loss has shifted from Mary to Frank and the owner of the apartment building. Ultimately, this is a judgment for the court to resolve.

REPAIRS

Obviously, in contrast to Frank McGreedy, Sally Fare is eager to keep all of her units in top repair. She is aware of rules in Texas:

VISUAL #19
Texas Rules on Repairs

Rule One: Under state law a landlord, absent provisions to the contrary in the lease, has no duty to repair defects.

Rule Two: A major exception is that the landlord does have a **duty to repair** if the defect or condition materially affects the physical health or safety of an ordinary tenant and such condition resulted from normal wear and tear. This does not include any conditions created by the tenant.

Tx. Prop. Code, Sec. 92.052

What events must take place to give tenants **statutory remedies**?

Tx. Prop. Code, Sec. 92.056

- tenant's written or oral **notice of defect** to the person and place of rent payment (written notice, required in some leases, is always preferable.)
- tenant current in rent
- landlord failure to begin repairs within a reasonable time
- thereafter, tenant gives written notice demanding repairs within seven days and states that the tenant will terminate the lease or file suit under Subchapter B, Title 8 of the Texas Landlord-Tenant Act, unless the condition is repaired or remedied within seven days after receipt of notice.

Tx. Prop. Code, Sec. 92.051-.061

VISUAL #20
Events That Give Tenants Statutory Remedies in Texas

The lease can make the tenant financially responsible for a wide range of repairs that would be the landlord's responsibility. However, the lease cannot free the landlord of the duty to keep the premises free from conditions that materially affect physical health and safety.

Sally makes it easy for her tenants to have repairs done. In her newsletter, she includes a form the tenants can use to notify her of minor problems or conditions that lead to major problems. Tenants are responsible for minor repairs during their occupancy. However, Sally again makes it easy by lending tools at no charge. She distributes a list of reliable service companies and stores for materials. She provides free advice on making repairs. She gives each tenant a list of emergency phone numbers, including plumbers, electricians, police, fire department, hospital and her residence.

PAYING RENT

Frank McGreedy awoke to a mountain of suds in the swimming pool. Some children had put laundry detergent in it the night before. He put a padlock on the pool gate and posted a notice that the swimming pool was closed. Mary Complainer liked to use the pool. When it did not open after a week, she asked Frank about his plans to open the pool. He told her the pool would open when the next ice age arrived and dinosaurs again roamed the Earth. In protest, Mary reduced her rent by $50 per month. She told him she would not pay full rent until he reopened the pool.

A couple of nights later, Mary's key no longer opened her door. When she confronted Frank, he told her she couldn't get back into her apartment until she paid the rent she owed. She refused and Frank wouldn't give her a

key. She stayed with a friend that night. The next day her lawyer called Frank and suggested strongly that he give Mary her key. Frank relented, and Mary was able to stay in her apartment the next night. To punish Frank, she reduced the rent payment another $100.

Frank turned off her gas and electricity, entered her apartment and removed her television set and refused to restore them until she paid what she owed. After Mary gave up and paid the money, Frank said he was raising her rent $25 because of all the trouble she had caused.

Mistake Number One: **Holding** back rent owed. In Texas, the tenant cannot use the landlord's breach of contract to justify holding back partial or total rent. Most **legal remedies and rights** are available only if rents are current.

Tx. Prop. Code, Sec. 24.005
Tx. Rules of Civil Proc., Rule 738

The fact that Frank tried to punish all residents in the apartment project for the children's vandalism does not justify rent withholding. Indeed, it is questionable whether the swimming pool is part of the lease contract. It was an ill-advised management decision that should have been solved through diplomacy instead of retaliation.

It might be noted that Frank can't unilaterally raise Mary's rent by making an oral statement. He must give a written notice. This notice is not effective unless the written lease allows for rent increases. If there is no lease, then he usually can give a 30-day advance notice to raise rents.

Mistake Number Two: **Lock-out** did not follow statutory procedures; illegal cut-off of utilities. When a landlord uses self-help methods, certain legal

Tx. Prop. Code, Sec. 91.002

conditions must be met and statutory procedures must be followed.

VISUAL #21
Statutory Procedures for Lock-out

- tenant must be delinquent in paying rent
- lock changes must be accompanied by written notice on the tenant's front door stating the name and location where the new key may be obtained
- new key must be available to the tenant at any hour, regardless of tenant's rent status.

If Mary was paying directly to the utility company, Frank's action of **disconnecting service** was unlawful. If Frank was paying for the utilities, he may have been within his rights if the lease so specifies.

Tx. Prop. Code, Sec. 91.002

Mistake Number Three: Entry and removal. Texas law gives the landlord of a single- or multi-family residence a **statutory lien** for unpaid rent due. The lien attaches to non-exempt property in the residence or a storage room and applies only when there is a written lease agreement.

Tx. Prop. Code, Sec. 54.041-.045
Sec. 91.004

Items specifically exempt are clothes, tools, apparatus and books of a trade or profession, schoolbooks, family library, family pictures, one couch, two living room chairs, dining table with chairs, beds, bedding, kitchen furniture and utensils, foodstuffs, medical supplies, one automobile, one truck, agricultural implements, goods landlord knows are owned by a person other than tenant or occupant of the residence, and goods landlord knows are subject to a recorded chattel mortgage or financing agreement.

VISUAL #22
Property Exempt from Removal for Unpaid Rent

VISUAL #23
Property Exempt from Removal (continued)

In addition, the landlord may take a contractual lien in the tenant's non-exempt property, but only where such lien provisions are underlined or printed in bold conspicuous print in the lease agreement.

If the tenant has abandoned the residence, the landlord has the right to remove its contents.

RESOLVING DISPUTES

Mary and Frank had many grievances. Frank wanted to throw Mary out of her apartment for playing the tuba, making trouble and breaching the conditions of her lease. He was giving her a mere 24 hours to vacate the premises. Mary, not prepared to move so quickly, wanted to sue Frank for not honoring the lease obligations. Mary threatened injury to Frank if he tried to enter her apartment.

Tx. Prop. Code, Sec. 92.056; Sec 92.201
Tx. Rules of Civil Proc., Rule 739-755

Force is not a solution. Frank could not evict Mary forcefully. Mary was entitled to a court restraining order, or she could call the police to prevent the illegal eviction. Mary would have learned that a forceful eviction with 24-hour notice is illegal. Also, if Frank and Mary had used force, they may have faced charges for assult and battery, criminal trespass or other criminal violations. Civil penalities also could have resulted.

After rejecting the use of force, their first step was to call their lawyers. Frank refused his lawyer's advice to discuss his differences with Mary out of court and demanded immediate legal action. Mary's attorney was out of town, so she called a friend, who advised her to ignore the eviction notice.

Mistake Number One: Not considering alternatives to legal action. Using lawyers to resolve landlord-tenant disputes is seldom cost effective if feasible alternatives exist. There are alternatives to a lawsuit.

VISUAL #24
Alternatives to a Lawsuit

- compromise
- mediation by a third person
- **arbitration** by a panel.

Tx. Prop. Code,
Sec. 24.001-.008
Sec. 92.005

Mistake Number Two: Taking legal advice from a layperson. Mary's friend's advice would have gotten her evicted had Frank persisted. A tenant who refuses to surrender possession on demand commits a **forcible detainer** and is subject to immediate eviction. A tenant who fails to fulfill technical requirements is virtually guaranteed to lose. **Eviction is a step-by-step process.**

Tx. Prop. Code,
Sec. 24.001-.008;
Sec. 92.051
TX. Prop. Code,
Sec. 24.001-.004; .007
Tx. Rules of Civil Procedure
Regarding Eviction

Step One: Landlord gives tenant notice to vacate, usually by certified mail but can be in person or by regular mail.

VISUAL #25
Eviction Procedures

Step Two: Tenant vacates within 72 hours after notice or landlord may file suit with justice of the peace. Tenant may be assessed court costs and landlord's attorney fees if the tenant is sent a written demand to vacate by registered or certified mail at least 10 days before further legal action is filed.

Step Three: Failure to vacate or respond to notice of court hearing within 10 days will result in loss by default. The hearing, usually held within seven to 10 days, allows tenant to ask for a jury trial by paying a small fee.

Step Four: At the hearing, each party may present evidence--testimony by witnesses, statements by landlord and tenant, photographs, letters, lease and other legal agreements. If tenant fails to attend or is behind in rent, generally, tenant will lose. Generally, lawyers are not used in a small claims court (claims up to $1,000).

Step Five: If tenants lose, they have five days to vacate unless they appeal. The court can order a sheriff to remove stubborn tenants.

Step Six: Inventoried personal property is turned over to the landlord who has an opportunity to exercise the **landlord's lien**. Tenants are wise to vacate within 10 days.

Tx. Prop. Code, Sec. 54.041; 91.004

Tenants also may use the courts to **enforce** their **rights**. A tenant could sue a landlord for $1,000 or less in the justice of the peace or **small claims** court. The court usually provides help and information on procedures and papers to be filed. The cost is less than $30. Other useful information can be found in How to Sue in Small Claims Court, a pamphlet published by the Texas Young Lawyers, P.O. Box 1248, Capital Station, Austin, Texas 78711.

Tx. Prop. Code, Sec. 92.056; 92.157; 92.205; 92.260
Tx. Rules of Civil Procedure

VISUAL #26
Tenants May Use Courts

MOVING OUT AND SECURITY DEPOSITS

Tx. Prop. Code, Sec. 91.001; 92.101-.109

Jack needed more space, so he decided to move from Sally's complex. Jack was aware that Texas law requires the landlord to return the tenant's deposits within 30 days after the move if lease terms were met. Ordinary wear and tear cannot be charged against a security deposit, but deposits can be withheld for breaking the lease or property damage. If the deposit is withheld or any deductions are made, the landlord is required to give the tenant a written, itemized list. However, landlords are not obligated to return deposits or give lists of damages until the tenant furnishes a forwarding address.

A landlord who fails to either return a **security deposit** or provide a written, itemized list of deductions within 30 days after a tenant moves is presumed to have acted in bad faith and is subject to statutory sanctions.

Tx. Prop. Code, Sec. 92.001; .002; .006
Sec. 92.101-.109

Sally uses the security deposit as an incentive for tenants to clean units before they move. When a tenant is planning to move, Sally inspects twice. First, she and the tenant discuss what the tenant can repair or clean such as

ovens, which costs $25 out of the security deposit or broken closet rods, which cost a carpenter's hourly rates. She gives the tenant a checklist of things to remember. In the second inspection, Sally lets the tenant know what charges will be made to the security deposit. Here are some tips about security deposits.

VISUAL #27
Security Deposit Tips

- Applying the security deposit to the **last month's rent** without written permission from the landlord may be regarded as withholding rent, could cost tenants up to three times the amount of rent withheld plus attorney fees and court costs.

Tx. Prop. Code, Sec. 92.108

- Tenants should read their leases for **termination requirements.** If unmet termination clauses are underlined or in boldface, the tenant may forfeit the security deposit as liquidated damages. If written notice to vacate is required, tenants should use certified mail and keep copies.

Tx. Prop. Code, Sec. 91.001

Sally and Jack walked through the apartment, referring to the **checklist** filled out when Jack moved in. After Jack moved, Sally mailed Jack an itemized list plus the balance of his security deposit within the statutory time period. She also sent a personal note telling him how much she appreciated having him as a tenant. Sally knows that Jack can be a positive contributor to the apartment project's image for a long time. Many of her current tenants are the result of referrals.

Tx. Prop. Code, Sec. 92.102-.109

Mary Complainer, unwilling to spend money taking Frank to court, packed her station wagon with the few possessions the burglar left her and sneaked away in the middle of the night. Frank was standing on his balcony when she drove away. He shook his head in disgust and said, "Goodby Ms. Complainer."

Because Frank McGreedy was such a poor property manager, the owner was

forced to sell the complex at a loss. Sally Fare, the new owner, fired Frank and began cleaning, upgrading and refurnishing the units. Although some leases were terminated for good cause, the apartment complex, under Sally's careful management, is showing positive cash flow and a steady improvement in image.

HANDOUT A

INSPECTION CHECKLIST

Street Address _____ Unit Number _____ City _____ State _____ Zip Code _____

Tenant _____ Landlord or Agent _____ Move-in date _____

Inspection date: In _____ Out _____

CODE:

Location				Condition							
T	Top	B	Bottom	DI	Dirty	SC	Scratch	LE	Leak	BO	Bulb Out
L	Left	R	Right	SP	Spot	WO	Worn	RU	Rust	NA	Nail
M	Middle	F	Front	ST	Stain	TR	Tear	CO	Corrosion	NW	Not Working
BA	Back	E	Edge	BU	Burn	CR	Crack	RM	Rot/Mold	MI	Missing
C	Corner	S	Side	ME	Melted	CU	Cut	LO	Loose	MA	Major
				HO	Hole	BK	Break	WO	Worn	MR	Minor

Rooms EN Entry(Hall) LR Living Room DR Dining KI Kitchen BR Bedroom BA Bath CL Closet

ROOM	FEATURE OR ARTICLE	CONDITION (MOVE-IN)	REPAIRS NEEDED OR COMMENTS	CONDITION (MOVE-OUT)	INITIAL REPAIRS BY LANDLORD/TENANT

The above move-in inspection on this and attached pages represents a true record of the rental unit's contents and our best opinion of its condition at time of inspection.

Move-in Inspection: _____ Tenant _____ Landlord or agent _____ Date

Move-out Inspection: _____ Tenant _____ Landlord or agent _____ Date

Inspection Checklist Page _____ of _____

Move-in: _____ _____
Tenant's Initial Landlord's Initials

_____

Move-out: _____ _____
Tenant's Initials Landlord's Initials

_____
Address of Unit

ROOM	FEATURE OR ARTICLE	CONDITION (MOVE-IN)	REPAIRS NEEDED OR COMMENTS	CONDITION (MOVE-OUT)	INITIAL REPAIRS BY LANDLORD/TENANT

Article	Move-in Inspection		Move-out Inspection		Comments (Repairs to be made, etc.)
	Location Code	Condition Code	Location Code	Condition Code	

Instructions: Inspect each article of furniture and accessories in rental unit. Note the condition location. Include any special problems or repairs to be made in the comment section.

Move-in Inspection: _____ Tenant _____ Landlord or agent _____ Date

Move-out Inspection: _____ Tenant _____ Landlord or agent _____ Date

HANDOUT B

TENANT'S LEASE CHECKLIST

_____ 1. Are there any provisions that are printed in large or bold type?

_____

_____

_____

_____

Notes for questions that you want to ask the landlord or for comments.

Comment: These provisions are likely to be very important and can affect statutory rights the tenant might otherwise have. Some leases ask the tenant to "waive" certain rights. To waive something means that you are giving up a right that you may have. You are advised to cross out some clauses that seem unfair. If the landlord doesn't agree to removing this provision you might wish to shop around some more until you find a more reasonable landlord.

_____ 2. What is the term or period of the lease?

_____

a. What happens when the original term of the lease ends?

_____

b. Is it automatically renewed?

_____

c. For how long?

_____

_____ 3. How much notice must the tenant give in advance to end a lease?

_____

_____

Comment: Where no term is specified, the landlord and tenant have a "month-to-month" tenancy. This means that either can give one-month's notice to end

the lease. In fact some leases say that the tenant must give at least one-month's WRITTEN notice or lose the security deposit.

_____

_____ 4. Who pays for the utilities?

_____

a. Which utilities does the landlord include in rent?

_____

_____

_____

b. Which utilities does the tenant pay for?

_____

_____

_____

c. Are the utilities on a master meter or is there a separate meter for each tenant?

_____

d. Did you ask to see typical monthly charges for the utilities?

_____

_____

_____

Comment: If the tenant is paying for the utilities, the landlord cannot interrupt service except for a valid reason such as repairs or emergencies. A rent dispute or other dispute with a tenant is not a valid reason. A wrongful interruption by the landlord can result in a court award for actual damages, plus one month's rent, plus attorney fees and court costs.

_____ 5. How much is the rent?

_____

Tenant's Lease Checklist - continued.

_____ 6. Can the rent be changed in the middle of the term?

_____

Comment: Unless the lease says the rent can be changed, the landlord cannot raise the rent. For that matter, the landlord cannot change other contract provisions either. However, sometimes the lease will say that the rent can be changed. For example, if certain expenses of the landlord (taxes, insurance, utilities, etc.) go up, this can be passed on to the tenant; or the lease rent might be tied to an index. If the index goes up, the rent can go up. An oral lease is like a written lease, except you may have a hard time proving to the court what terms were agreed to by the landlord. Besides, if the lease is for more than one year it must be in writing, otherwise, you are likely to have a month-to-month lease. This means that rents can be changed by giving a month's notice.

_____ 7. Are there any restrictions on getting back your security deposit?

_____

_____

_____

_____

_____

_____

_____ 8. Is there a nonrefundable clean-up fee or other charge?

_____

_____

_____

_____ 9. What day of the month (week) is the rent due?

_____

_____ 10. Is there a late charge and how is it calculated?

_____

Tenant's Lease Checklist - continued.

_____ 11. Who is responsible for repairs?

_____

_____

Comment: Unless the lease says otherwise, in Texas, the landlord has no duty to make repairs unless there are conditions that materially affect the physical health or safety of the ordinary tenant. YOU MUST PAY RENT EVEN IF THE LANDLORD HAS NOT FULFILLED HIS OR HER CONTRACTUAL PROMISES TO YOU! Even if the landlord has promised to make repairs and fails to do so, you must still be current in your rent or you will lose your rights to be heard in court. Also, normally the landlord is not responsible for damage created by the tenant or the tenant's guests. In Texas, your duty to pay rent is independent of the landlord's contract duties. This is because the duty to pay rent is based on property law, not contract law.

_____ 12. What house rules and regulations must be followed?

_____

_____

_____

_____

_____

a. Are pets allowed?

_____

b. Is there a pet deposit and is it refundable?

_____

c. Can you have a waterbed?

_____

d. Can you redecorate?

_____

e. Can you make physical changes (shelves, etc.)

_____

f. Who owns any changes like shelving units?

_____

g. How many people can occupy your unit?

_____

h. Is the restriction based on the lease or a zoning or local housing code? (the lease can be negotiable)

_____

Comment: Usually the house rules are included in your lease contract by reference. This means you are bound by these rules. If the rules materially change during the term, you may not necessarily be bound by them, however, if there is a question you will need to consult an attorney. Reasonable changes in the house rules are probably enforceable. It should be noted that changes by local government in housing code and zoning restrictions are normally binding and can supercede a lease.

_____ 13. Can you sublet or assign the lease?

_____

_____

_____

_____

Comment: Unlike most states, in Texas you do NOT have the right to sublet unless the lease says so, or unless the landlord gives you permission (preferably written permission).

_____ 14. Are there other provisions that you need to ask questions about?

_____

_____

_____

_____

_____

Tenant's Lease Checklist - continued.

_____ 15. IMPORTANT: Is there any word, phrase, or sentence you don't understand?

_____

_____

_____

_____

Comment: Find out what the word, phrase, or sentence means before you sign the contract. Beware of strange sounding words like "cognovit." They can mean trouble. If necessary ask a lawyer or a legal clinic.

_____ 16. Did you keep a signed copy of the lease for your files?

TENANT-LANDLORD CHECKLIST
Handout C

Tenants Should:

_____ Identify neighborhoods and locate complexes

_____ Check reputation of owners and property managers

_____ Inspect premises for mechanical and cosmetic defects

_____ Read and understand lease agreements and house rules

_____ Insist on cash receipts for deposits and rents

_____ Check condition and learn to operate equipment

_____ Check door locks, window latches and other security

_____ Get complete list of emergency telephone numbers

_____ Never withhold rent payment

_____ Give proper notice when vacating

Landlords Should:

_____ Present a professional image

_____ Check references of tenant applicants

_____ Explain lease agreement and provide written copy

_____ Clean, repair and exterminate before showing

_____ Check wiring, plumbing and other equipment regularly

_____ Install smoke detectors and safety lights

_____ Provide a complete list of emergency telephone numbers

_____ Never enforce house rules selectively

_____ Understand eviction and other legal processes

_____ Calculate deposit deductions fairly and promptly

For more information on landlord-tenant rights and responsibilities, see a copy of the TAA Redbook published by the Texas Apartment Association. Local apartment associations have copies.

Lease Cycle

- Selecting a place to live
- Inspecting premises
- Entering lease agreement
- Moving in
- Day-to-day living
- Repairs
- Paying rent
- Resolving disputes
- Moving out and security deposits

Texas Real Estate Research Center
TIP-10, Visual No. 1

Making Comparisons by Telephone

- Size and type of unit
- Rent and security deposit
- Policy on pets, children
- Written lease requirements
- Clubhouse, swimming pool, extras
- Utilities--Who pays what?
- Cable television availability
- Short-term lease possibilities
- Neighborhood

Texas Real Estate Research Center
TIP-10, Visual No. 2

Items of Concern

- Owner's response to repairs
- Owner's reputation for returning security deposits
- Maintenance
- Crime, noise and other problems
- Lighting of common areas
- Parking

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Landlord's Professional Image

- Business attire
- Professional office decor
- Unit cleaned, checked

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Showing Defective Unit Can Lead to:

- Lower rent value
- Tenants who lack pride in the place they live
- Displacement of responsible tenants
- Decline in total investment value

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TIP-10, Visual No. 5

Carefully Inspect for:

- Exposed electrical wires
- Lead paint (found in some old homes)
- Smoke detector (required in Texas)
- Protective strips on bathtub floor
- Insects
- Working door locks and window latches
- Escape ways in high-rise buildings

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Comfort and Quality-of-Life Checks

- Sufficient water pressure
- Hot, clear water
- Working air conditioner
- Functioning toilets
- Functioning kitchen appliances
- Air drafts and water leaks
- Functioning electrical outlets

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TIP-10, Visual No. 7

Avoid Unnecessary Repairs By Checking for:

- Ceiling leaks
- Unusual noises from mechanical equipment
- Loose screws
- Doors that do not open freely or close snugly
- Insufficient door and window seals

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Rental Application Should Contain:

- Personal information
- Whom to contact in emergency
- Employment Information
- Current or previous address
- Credit information
- Other information
- Personal references
- Driver's license number

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Illegal Discrimination

- Federal law prohibits on basis of:
  - -- Race
  - -- Color
  - -- Religion
  - -- National origin
  - -- Sex
- Local laws may impose additional restrictions

Tenant Evaluation Made On:

- Credit standing
- Assets and liabilities
- Financial stability
- Community reputation
- Past experience as tenant
- Length of time as tenant
- Plans to occupy unit
- Justifiable business reasons
- Age, occupation, family size and childrens' ages may be factors in some cities

Understanding Legal Obligations

- Contract creating legal rights, duties
- Conveyance of an interest in real estate
- Subject to federal and state statutes
- Interpreted by courts based on contract and property law

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Mary Complainer's Unit

- Roof leaks
- No air conditioning
- No hot water
- Stove inoperative
- Freezer broken
- Rodent
- Broken water pipe
- Door won't lock
- No window latch

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Waivers Enforceable If:

- Lease in writing
- Waiver underlined or in bold print
- Waiver specifically and clearly lists duty being waived
- Waiver made knowingly, voluntarily and for consideration

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Consequences of Selective Enforcement of House Rules

- Lack of tenant respect
- Lowered tenant morale
- Legal waiver of house rules

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Local Housing Codes

- Landlord fails to correct problems
  - City inspects premises
- Second city inspection conducted
  - Tenant may file charges
    - Tenant may appeal

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Presumption of Landlord Retaliation

- Within six months of notice to appear, landlord:
  - -- files eviction proceedings
  - -- deprives tenant of use of premises
  - -- decreases services to tenant
  - -- increases rent or terminates lease

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Co-tenancy Agreements

- Should be in writing and contain:
  - -- rents
  - -- utility costs
  - -- bathroom and kitchen privileges
  - -- household chores and ownership of groceries
  - -- additional roommates
  - -- terminating arrangement and satisfying lease
  - -- guests and privacy

Texas Rules on Repairs

- Rule No. 1:

  Landlord, absent lease provisions to the contrary, has no duty to repair defects

- Rule No. 2:

  A major exception is--the landlord does have a duty to repair if the defect materially affects the health or safety of tenant

Events That Give Tenants Statutory Remedies in Texas

- Notice of defect to person at place of rent payment
- Current in rent
- Landlord fails to begin repairs within reasonable time
- Tenant demands for repairs are in writing

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Statutory Procedures for Lock-out

- Tenant must be delinquent in rent
- Lock changes accompanied by written notice
- New key must be available

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TIP-10, Visual No. 21

Property Exempt From Removal For Unpaid Rent

- Clothes
- Tools
- Apparatus, books of trade or profession
- School books
- Family library, photographs
- One couch
- Two living room chairs
- Dining table and chairs

Property Exempt from Removal (continued)

- Beds and bedding
- Kitchen furniture, utensils
- Foodstuffs
- Medical supplies
- One automobile
- One truck
- Agricultural implements
- Goods owned by others
- Goods subject to mortgage or financing

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Alternatives to a Lawsuit

- Compromise
- Mediation by third party
- Arbitration by a panel

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Eviction Procedures

- Notice to vacate given
- Suit filed with justice of peace
- Response to hearing notice received
- Hearing conducted
- Tenant vacates or appeals
- Landlord's lien awarded

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Tenants May Use Courts

- Lawsuits for $1,000 or less filed in Justice of Peace or Small Claims Court
- useful information available in:
  How to Sue in Small Claims Court
  Texas Young Lawyers
  P.O. Box 1248, Capitol Station
  Austin, Texas 78711

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Security Deposit Tips

- Avoid applying security deposit to last month's rent
- Read lease for termination requirements

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